

No. 12-1399 – *State of West Virginia v. Tiffany Lucas*

Ketchum, Justice, dissenting:

The defendant exercised her constitutional right to remain silent at her sentencing. The trial court punished her for remaining silent stating, “Then she will pay for that.”

In *Mitchell v. U.S.*, 526 U.S. 314 (1999), the Supreme Court held that a sentencing court may not draw an adverse inference from a defendant’s silence. We should have remanded this case for resentencing by a different judge.

I dissent.